

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.Rev.Pet.No. 535 of 2000()

CC.70/1997 of JUDL.MAGISTRATE OF FIRST CLASS, PALA DT.20.12.99
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REVN. PETITIONER: DEFATO COMPLAINANT

**JOSEPH MATHEW, S/O. MATHEW,
THARAPPEL HOUSE, PARAPPALLY KARA,
POOVARANY.**

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS: ACCUSED. COMPLAINANTS

- 1. TOMY, S/O.THOMAS, KUTTIYANKAL
VEEDU, PANTHATHULA KARA, PULIYANNOOR.**
- 2. JAISON, S/O.DEVASSIA,
KUTTIYANKAL VEEDU, PANTHATHULA
KARA , VALLICHIRA.**
- 3. STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**BY ADV. SRI.G.JANARDHANA KURUP
PUBLIC PROSECUTOR SRI.C.K.SURESH**

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

CRRP. NO.535/2000

ORDER

NO REPRESENTATION. DISMISSED.

28.06.2007

SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NO.535 OF 2000

DATED THIS THE 26th SEPTEMBER 2007

ORDER

The revision petitioner is the de facto complainant who was allegedly assaulted by the accused with deadly weapons hat left him with grievous injuries including fracture. The court below acquitted both the accused which is challenged herein.

2. The prosecution case is that on 19-1-1997 at about 4 p.m.the accused two in number entered residential compound of PW1 and called him out and the first accused beat him with an iron rod and the 2nd accused hit him with a cycle chain and as a result PW1 sustained dislocation of the left elbow and fracture of the left leg below knee. The evidence adduced in the matter consisted of the testimony of Pws.1 to 9 and Exts.P1 to P7 and Mos.1 and 2. The defence got examined DW1.

3. The injury sustained by PW1 is proved from the evidence of PW8, the Doctor at Karithas Hospital who has proved Ext.P4 wound certificate issued by him on 19-1-1997 at 5.15 p.m. The injuries noted are dislocation of the left elbow; type-1

compound fracture of the left tibia; contusion left shoulder and back, lacerated wound 1x1x1 c.m. on the anteromedial aspect of right leg middle 1/3rd. The alleged cause is beaten with an iron rod. PW1 the victim and Pw5, his wife have testified as to the incident. The rest of the occurrence witnesses examined turned hostile. It is the version of PW1 that there was a dispute with respect to a pathway touching his property and that he had initiated civil proceedings and had obtained an injunction order and that the dispute was with the members of the Kutiyankal family. The accused belong to the above family. According to him, the incident took place in his residential compound. PW1 has stated that at on 19-1-1997 at about 4 p.m. the first accused called him out purportedly to say something and then he got down from the verandah and went near the accused. Then the first accused saying that "will you not give me the way" hit with an iron rod which was hidden in his shirt and he fell down and the first accused repeated beatings and the 2nd accused beat him with a cycle chain. Hearing the cries, his wife and son came to the place. The other neighbours also came.

The accused threatening that they will finish him off unless the way is provided ran away. He has proved Ext.P1 F.I.S. which was recorded by the police from the hospital and also identified Mos.1 and 2. PW5, the wife of PW1 has supported the version of PW1. Herself and her husband were sitting in the verandah and after some time she went to the kitchen and after about 5 to 6 minutes she heard the loud cries of her husband; and herself and her son rushed outside the house and saw PW1 lying down and the first and second accused beating him repeatedly with iron rod and cycle chain respectively. Some of the neighbours whom she has named came running. The names of the neighbours mentioned by Pws.1 and 5 tallies. When all of them came to the spot, the accused ran away.

4. I find that the trial court has acquitted the accused on the ground that Pws.2 to 4, the alleged occurrence witnesses and that DW2, taxi driver who took PW1 to the hospital. DW1 has testified that PW1 on the way told him that he sustained injury when he fell down to the thondu, i.e. the pathway at a lower level. According to the court below, DW1 ought to have been

examined by the prosecution as he is a material witness. He is not a charge witness. Pws.2 to 4 as also in the cross examination of the defence have stated that PW1 was found lying in the thondu. Hence, according to the court below, the version of Pws.2 to 4 and DW1 tallies. The court found on the basis of the evidence of Pws.2 to 4 that the prosecution has two different versions. The court has also found that no proper justification was provided for taking PW1 to a private hospital rather than to a Government hospital which is nearer to his house. The court has also found that the evidence of the Doctor showed that there was no corresponding injury over the area where PW1 was beaten with iron rod.

5. As contended by the counsel for the revision petitioner, the findings of the courts below that the prosecution has got two different versions and that there is no proper justification for not taking PW1 to the Government hospital, I find, amounts to absurdity. The court below has ignored the fact that Pws.2 to 4 were treated as hostile and cross examined by the prosecutor. In the circumstances and in view of the grievous nature of the

injuries sustained by PW1, I find that the matter requires reconsideration at the hands of the trial court even in view of the constraints in the exercise of the revisional jurisdiction.

In the circumstances, the findings of the courts below acquitting the accused is set aside and the matter is remitted back to the court below. The court below is directed to rehear the matter and dispose of the same on merits untrammelled by any observations, if any, contained in this order. The matter will be posted before the court below on 30-10-2007.

sd/-

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. 535 of 2000

ORDER

26-9-2007